



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,552	01/31/2002	Clayton N. Cowgill	1087-RIO446	2737
60533	7590	10/30/2007		
TOLER SCHAFFER, LLP 8500 BLUFFSTONE COVE SUITE A201 AUSTIN, TX 78759			EXAMINER SELLERS, DANIEL R	
			ART UNIT 2615	PAPER NUMBER
			MAIL DATE 10/30/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/066,552	<b>Applicant(s)</b> COWGILL ET AL.	
	<b>Examiner</b> Daniel R. Sellers	<b>Art Unit</b> 2615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 27-30,32,41 and 48-61 is/are pending in the application.
- 4a) Of the above claim(s) 42-46 and 54-57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27-30,32,41,48-53 and 58-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. **Claims 54-57** are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/24/07.

### *Response to Arguments*

2. Applicant's arguments with respect to claims 27-30, 32, 41, and 48-61 have been considered but are moot in view of the new ground(s) of rejection.
3. The indicated allowability of claim 41 is withdrawn in view of the newly discovered reference(s) to Hisano et al. (US 2002/0091049) and Goodman (USPN 6,616,613). Rejections based on the newly cited reference(s) follow.

### *Claim Rejections - 35 USC § 103*

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. **Claims 27-30, 32, 41, 50-53, and 58-61** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hisano et al. (US 2002/0091049) in view of Goodman (USPN 6,616,613) (hereinafter Hisano and Goodman respectively).
6. Regarding **claim 27**, Hisano teaches a portable audio player (Fig. 1 and 8) comprising:

*a memory to store data associated with a plurality of audio tracks; (¶ 0054 and Fig. 8b, unit 112) and*

Art Unit: 2615

*a processor coupled to the memory, the processor to receive biometric data and to select one of the plurality of audio tracks according to the biometric data (§§ 0054, 0061, 0067, 0068, and Fig. 8b, units 101, 107, and 109).*

*wherein the processor is adapted to store the biometric data in the memory (§§ 0061, 0071, and 0072);*

*wherein the portable audio player further comprises a communication port to communicate the biometric data to a computing device (§§ 0061 and Fig. 8b, unit 106);*

*wherein a power supply is applied to the communication port to power a peripheral device to monitor a user to determine the biometric data.*

Hisano teaches these features in a portable audio player, however Hisano only teaches a battery, or power supply, contained in the fitness controller, or audio player (Fig. 8b and Fig. 14). Hisano does not explicitly teach or suggest a power supply applied to the communication port to power a peripheral device to monitor a user.

Goodman teaches a photoplethysmography (PPG) sensor (Col. 1, lines 29-38). Goodman teaches a universal serial bus (USB) connection between a computer, or a personal data assistant (PDA), which can be used to communicate biometric data from the PPG sensor to the portable audio player (Col. 9, lines 6-33). A computer is well known to be portable and an audio player, however Hisano's teachings are relied upon for those features. Also, Goodman teaches powering the peripheral device, or the PPG sensor, through the USB connection (Col. 12, line 64 - Col. 13, line 2). It would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teachings of Hisano and Goodman for the purpose of saving space.

7. Regarding **claim 28**, the further limitation of claim 27, see the preceding argument with respect to claim 27. The combination teaches that the biometric data is a pulse rate, or heart rate.

8. Regarding **claim 29**, the further limitation of claim 27, see the preceding argument with respect to claim 27. In the combination, Hisano teaches a second

Art Unit: 2615

communication port responsive to the peripheral device to receive the biometric data (§ 0076, Fig. 10, unit 401-1, and Fig. 14, unit 401-2).

9. Regarding **claim 30**, the further limitation of claim 29, see the preceding argument with respect to claim 29. In the combination, Hisano teaches a peripheral device comprising a pulse rate monitor.

10. Regarding **claim 32**, the further limitation of claim 27, see the preceding argument with respect to claim 27. In the combination, Hisano teaches a processor adapted to select a first audio track of a plurality of audio tracks when the biometric data exceeds a threshold (§ 0061 and 0067-0072).

11. Regarding **claim 41**, see the preceding argument with respect to claim 27. The combination teaches these features in a portable audio player.

12. Regarding **claim 50**, the further limitation of claim 41, see the preceding argument with respect to claim 27. In the combination, Hisano teaches biometric data comprising pulse rate data (§ 0030).

13. Regarding **claim 51**, the further limitation of claim 50, see the preceding argument with respect to claim 50. In the combination, Hisano teaches a pulse rate data received from a pulse rate monitor.

14. Regarding **claim 52**, the further limitation of claim 50, see the preceding argument with respect to claim 32. The combination teaches these features.

15. Regarding **claim 53**, the further limitation of claim 41, see the preceding argument with respect to claim 27. In the combination, Hisano teaches converting the biometric data to a particular format (§ 0061).

Art Unit: 2615

16. Regarding **claim 58**, the further limitation of claim 41, see the preceding argument with respect to claim 27. The combination teaches storing the biometric data.

17. Regarding **claim 59**, the further limitation of claim 58, see the preceding argument with respect to claim 27. The combination teaches downloading the biometric data to a computer application (Hisano, ¶ 0071-0072 and Goodman, Col. 9, lines 6-33).

18. Regarding **claim 60**, the further limitation of claim 59, see the preceding argument with respect to claim 27. In the combination, Goodman teaches a computer application to receive, store, chart, and manipulate the biometric data (Col. 9, lines 6-33).

19. Regarding **claim 61**, the further limitation of claim 41, see the preceding argument with respect to claim 27. In the combination, Hisano teaches displaying the biometric data (¶ 0054 and Fig. 8b, unit 104).

20. **Claims 48 and 49** are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Hisano and Goodman as applied to claim 41 above, and further in view of Gavish et al. (USPN 6,662,032) (hereinafter Gavish).

21. Regarding **claim 48**, the further limitation of claim 41, see the preceding argument with respect to claim 27. Hisano teaches that various parameters of an audio track can be changed according to biometric data. However, Hisano does not teach that the parameters are the volume of an output of the portable audio player. Gavish teaches that the volume can be controlled according to received biometric data (Col. 35, lines 23-29). It would have been obvious for one of ordinary skill in the art at the time of

Art Unit: 2615

the invention to combine the teachings of Hisano, Goodman, and Gavish for the purpose of inspiring the user to work harder or to slow down.

22. Regarding **claim 49**, the further limitation of claim 48, see the preceding argument with respect to claim 48. The combination teaches adjusting the volume, wherein it is obvious the volume is adjusted to a pre-determined level by virtue of Gavish's teachings (Col. 38, lines 40-48 and Col.40, lines 43-48).

### ***Conclusion***

23. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lauffer et al. (USPN 5,215,468) - teaches controlling volume and tempo in a portable audio player with respect to biometric data (abstract);

McHugh (USPN 6,230,047) - teaches a portable audio player, which receives biometric data (abstract);

Amano et al. (USPN 6,241,684) - teaches a device to receive biometric data of a user without the use of a large device (abstract);

Kita et al. (US 2001/0004397) - teaches a body-wearable music player (abstract);  
and

Matsuda et al. (US 2003/0030412) - teaches a power supply connection through USB from a portable audio player (¶ 0083).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel R. Sellers whose telephone number is 571-272-7528. The examiner can normally be reached on Monday to Friday, 9am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on (571)272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



**SINH TRAN**  
**SUPERVISORY PATENT EXAMINER**

DRS